

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)
Against:)
)
)
JAMES HO LEE, M.D.)
)
Physician's and Surgeon's)
Certificate No. G 84634)
)
Respondent)

Case No. 06-2013-233731

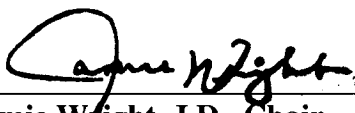
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 17, 2015.

IT IS SO ORDERED: June 18, 2015.

MEDICAL BOARD OF CALIFORNIA



**Jamie Wright, J.D., Chair
Panel A**

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 COLLEEN M. MCGURRIN
Deputy Attorney General
4 State Bar Number 147250
300 South Spring Street, Suite 1702
5 Los Angeles, California 90013
Telephone: (213) 620-2511
6 Facsimile: (213) 897-9395
Attorneys for Complainant

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

11 JAMES H. LEE, M.D.
307 Bluff Avenue
12 Fresno, California 93711

13 Physician's and Surgeon's Certificate No. G
84634

14 Respondent.
15

Case No. 06-2013-233731

OAH No. 2015010559

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
17 entitled proceedings that the following matters are true:

18 PARTIES

19 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
20 Board of California. She brought this action solely in her official capacity and is represented in
21 this matter by Kamala D. Harris, Attorney General of the State of California, by Colleen M.
22 McGurrin, Deputy Attorney General.

23 2. Respondent JAMES H. LEE, M.D. is represented in this proceeding by attorney Peter
24 R. Osinoff, Esq., whose address is Bonne Bridges Mueller O'Keefe & Nichols, 3699 Wilshire
25 Blvd., Tenth Floor, Los Angeles, California 90010-2719.

26 3. On or about June 19, 1998, the Medical Board of California issued Physician's and
27 Surgeon's Certificate No. G 84634 to James H. Lee, M.D. Said Certificate was in full force and
28 effect at all times relevant to the charges brought in Accusation No. 06-2013-233731 and will

1 233731 and will expire on September 30, 2015, unless renewed.

2 JURISDICTION

3 4. Accusation No. 06-2013-233731 was filed before the Medical Board of California
4 (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The
5 Accusation and all other statutorily required documents were properly served on Respondent on
6 October 28, 2014. Respondent timely filed his Notice of Defense contesting the Accusation.

7 5. A copy of Accusation No. 06-2013-233731 is attached as exhibit A and incorporated
8 herein by reference.

9 ADVISEMENT AND WAIVERS

10 6. Respondent has carefully read, fully discussed with counsel, and understands the
11 charges and allegations in Accusation No. 06-2013-233731. Respondent has also carefully read,
12 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
13 Disciplinary Order.

14 7. Respondent is fully aware of his legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
16 his own expense; the right to confront and cross-examine the witnesses against him; the right to
17 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
18 the attendance of witnesses and the production of documents; the right to reconsideration and
19 court review of an adverse decision; and all other rights accorded by the California
20 Administrative Procedure Act and other applicable laws.

21 8. Respondent freely, voluntarily, knowingly, and intelligently waives and gives up each
22 and every right set forth above.

23 CULPABILITY

24 9. Respondent admits the truth of paragraphs 22 B and D of the First Cause for
25 Discipline and each and every charge and allegation in the Second Cause for Discipline in
26 Accusation No. 06-2013-233731.

27 10. Respondent agrees that his Physician's and Surgeon's Certificate No. G 84634 is
28 subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in

1 the Disciplinary Order below.

2 CONTINGENCY

3 11. This stipulation shall be subject to approval by the Medical Board of California.
4 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
5 Board of California may communicate directly with the Board regarding this stipulation and
6 settlement, without notice to or participation by Respondent or his counsel. By signing the
7 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
8 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
9 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
10 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
11 action between the parties, and the Board shall not be disqualified from further action by having
12 considered this matter.

13 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
14 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
15 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

16 13. In consideration of the foregoing admissions and stipulations, the parties agree that
17 the Board may, without further notice or formal proceeding, issue and enter the following
18 Disciplinary Order:

19 DISCIPLINARY ORDER

20 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 84634 issued
21 to Respondent JAMES H. LEE, M.D. is revoked. However, the revocation is stayed and
22 Respondent is placed on probation for an additional one (1) year on the following terms and
23 conditions.

24 1. EDUCATION COURSE. Within 60 calendar days of the effective date of this
25 Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee
26 for its prior approval educational program(s) or course(s) which shall not be less than 20 hours
27 per year, for each year of probation. The educational program(s) or course(s) shall be aimed at
28 correcting any areas of deficient practice or knowledge and shall be Category I certified. The

1 educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to
2 the Continuing Medical Education (CME) requirements for renewal of licensure. Following the
3 completion of each course, the Board or its designee may administer an examination to test
4 Respondent's knowledge of the course. Respondent shall provide proof of attendance for 45
5 hours of CME of which 20 hours were in satisfaction of this condition.

6 2. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective
7 date of this Decision, Respondent shall enroll in a course in medical record keeping equivalent to
8 the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education
9 Program, University of California, San Diego School of Medicine (Program), approved in
10 advance by the Board or its designee. Respondent shall provide the program with any information
11 and documents that the Program may deem pertinent. Respondent shall participate in and
12 successfully complete the classroom component of the course not later than six (6) months after
13 Respondent's initial enrollment. Respondent shall successfully complete any other component of
14 the course within one (1) year of enrollment. The medical record keeping course shall be at
15 Respondent's expense and shall be in addition to the Continuing Medical Education (CME)
16 requirements for renewal of licensure.

17 A medical record keeping course taken after the acts that gave rise to the charges in the
18 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
19 or its designee, be accepted towards the fulfillment of this condition if the course would have
20 been approved by the Board or its designee had the course been taken after the effective date of
21 this Decision.

22 Respondent shall submit a certification of successful completion to the Board or its
23 designee not later than 15 calendar days after successfully completing the course, or not later than
24 15 calendar days after the effective date of the Decision, whichever is later.

25 3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
26 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
27 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.
28 Respondent shall participate in and successfully complete that program. Respondent shall

1 provide any information and documents that the program may deem pertinent. Respondent shall
2 successfully complete the classroom component of the program not later than six (6) months after
3 Respondent's initial enrollment, and the longitudinal component of the program not later than the
4 time specified by the program, but no later than one (1) year after attending the classroom
5 component. The professionalism program shall be at Respondent's expense and shall be in
6 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

7 A professionalism program taken after the acts that gave rise to the charges in the
8 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
9 or its designee, be accepted towards the fulfillment of this condition if the program would have
10 been approved by the Board or its designee had the program been taken after the effective date of
11 this Decision.

12 Respondent shall submit a certification of successful completion to the Board or its
13 designee not later than 15 calendar days after successfully completing the program or not later
14 than 15 calendar days after the effective date of the Decision, whichever is later.

15 4. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
16 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
17 Chief Executive Officer at every hospital where privileges or membership are extended to
18 Respondent, at any other facility where Respondent engages in the practice of medicine,
19 including all physician and locum tenens registries or other similar agencies, and to the Chief
20 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
21 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
22 calendar days.

23 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

24 5. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is
25 prohibited from supervising physician assistants.

26 6. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
27 governing the practice of medicine in California and remain in full compliance with any court
28 ordered criminal probation, payments, and other orders.

1 7. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
2 under penalty of perjury on forms provided by the Board, stating whether there has been
3 compliance with all the conditions of probation.

4 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
5 of the preceding quarter.

6 8. GENERAL PROBATION REQUIREMENTS.

7 Compliance with Probation Unit

8 Respondent shall comply with the Board's probation unit and all terms and conditions of
9 this Decision.

10 Address Changes

11 Respondent shall, at all times, keep the Board informed of Respondent's business and
12 residence addresses, email address (if available), and telephone number. Changes of such
13 addresses shall be immediately communicated in writing to the Board or its designee. Under no
14 circumstances shall a post office box serve as an address of record, except as allowed by Business
15 and Professions Code section 2021(b).

16 Place of Practice

17 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
18 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
19 facility.

20 License Renewal

21 Respondent shall maintain a current and renewed California physician's and surgeon's
22 license.

23 Travel or Residence Outside California

24 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
25 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
26 (30) calendar days.

27 In the event Respondent should leave the State of California to reside or to practice
28 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of

1 departure and return.

2 9. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
3 available in person upon request for interviews either at Respondent's place of business or at the
4 probation unit office, with or without prior notice throughout the term of probation.

5 10. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
6 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
7 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
8 defined as any period of time Respondent is not practicing medicine in California as defined in
9 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month
10 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All
11 time spent in an intensive training program which has been approved by the Board or its designee
12 shall not be considered non-practice. Practicing medicine in another state of the United States or
13 Federal jurisdiction while on probation with the medical licensing authority of that state or
14 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
15 not be considered as a period of non-practice.

16 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
17 months, Respondent shall successfully complete a clinical training program that meets the criteria
18 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and
19 Disciplinary Guidelines" prior to resuming the practice of medicine.

20 Respondent's period of non-practice while on probation shall not exceed two (2) years.

21 Periods of non-practice will not apply to the reduction of the probationary term.

22 Periods of non-practice will relieve Respondent of the responsibility to comply with the
23 probationary terms and conditions with the exception of this condition and the following terms
24 and conditions of probation: Obey All Laws; and General Probation Requirements.

25 11. COMPLETION OF PROBATION. Respondent shall comply with all financial
26 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
27 completion of probation. Upon successful completion of probation, Respondent's certificate shall
28 be fully restored.

1 12. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
2 of probation is a violation of probation. If Respondent violates probation in any respect, the
3 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
4 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
5 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
6 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
7 the matter is final.

8 13. LICENSE SURRENDER. Following the effective date of this Decision, if
9 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
10 the terms and conditions of probation, Respondent may request to surrender his or her license.
11 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
12 determining whether or not to grant the request, or to take any other action deemed appropriate
13 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
14 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
15 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
16 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
17 application shall be treated as a petition for reinstatement of a revoked certificate.

18 14. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
19 with probation monitoring each and every year of probation, as designated by the Board, which
20 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
21 California and delivered to the Board or its designee no later than January 31 of each calendar
22 year.

23 ///

24 ///

25 ///

26 ///

27 ///

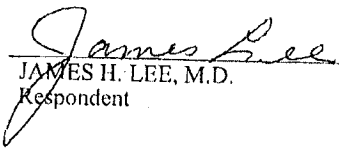
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ACCEPTANCE

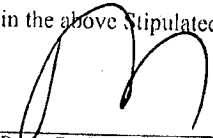
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Peter R. Osinoff, Esq.. I understand the stipulation and the effect it will have on my Physician's and Surgeon's. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 5/14/15


JAMES H. LEE, M.D.
Respondent

I have read and fully discussed with Respondent JAMES H. LEE, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 5/14/15


Peter R. Osinoff, Esq.
Attorney for Respondent


ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 5/15/15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General


COLLEEN M. MCGURRIN
Deputy Attorney General
Attorneys for Complainant

LA2014614359
61568799.doc

Exhibit A

Accusation No. 06-2013-233731

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO ~~OCTOBER 28 2014~~
BY *[Signature]* ANALYST

KAMALA D. HARRIS
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
COLLEEN M. MCGURRIN
Deputy Attorney General
State Bar Number 147250
300 South Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 620-2511
Facsimile: (213) 897-9395
Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 06-2013-233731

JAMES H. LEE, M.D.
307 W. Bluff Avenue
Fresno, California 93711

Physician's and Surgeon's No. G 84634

Respondent.

ACCUSATION

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

2. On or about June 19, 1998, the Medical Board of California issued Physician's and Surgeon's Number G 84634 to JAMES H. LEE, M.D. (Respondent). Said Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2015, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

///

- 1 4. Section 2004 of the Code provides, in pertinent part:
- 2 "The board shall have the responsibility for the following:
- 3 "(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
- 4 Act.
- 5 "(b) The administration and hearing of disciplinary actions.
- 6 "(c) Carrying out disciplinary actions appropriate to findings made by a panel or an
- 7 administrative law judge.
- 8 "(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
- 9 disciplinary actions.
- 10 "(e) Reviewing the quality of medical practice carried out by physician and surgeon
- 11 certificate holders under the jurisdiction of the board.
- 12 "(f) . . . (g)."
- 13 "(h) Issuing licenses and certificates under the board's jurisdiction.
- 14 "(i)"

15 5. Section 2220 of the Code provides, in pertinent part:

16 "Except as otherwise provided by law, the Division of Medical Quality¹ may take action

17 against all persons guilty of violating this chapter [Chapter 5, the Medical Practice Act]. The

18 division shall enforce and administer this article as to physician and surgeon certificate holders,

19 and the division shall have all the powers granted in this chapter for these purposes including, but

20 not limited to:

21 "(a) Investigating complaints from the public, from other licensees, from health care

22 facilities, or from a division of the board that a physician and surgeon may be guilty of

23 unprofessional conduct. . . ."

24 "(b) . . . (c)."

25 ///

26 ¹ California Business and Professions Code section 2002, as amended and effective January 1, 2008,

27 provides that, unless otherwise expressly provided, the term "board" as used in the State Medical Practices Act (Bus.

28 & Prof. Code § 2000, et seq.) means the "Medical Board of California," and references to the "Division of Medical

 Quality" and "Division of Licensing" in the Act or any other provision of law shall be deemed to refer to the Board.

1 6. Section 2230.5 of the Code provides, in pertinent part:

2 "(a) Except as provided in subdivisions (b) and (c), and (e), any accusation filed against a
3 licensee pursuant to Section 11503 of the Government Code shall be filed within three years after
4 the board, or a division thereof, discovers the act or omission alleged as the ground for
5 disciplinary action, or within seven years after the act or omission alleged as the ground for
6 disciplinary action occurs, whichever occurs first.

7 "(b) . . . (f)."

8 7. Section 2227 of the Code provides, in pertinent part:

9 "(a) A licensee whose matter has been heard by an administrative law judge of the Medical
10 Quality Hearing Panel as designated in Section 11371 of the Government Code . . . and who is
11 found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in
12 accordance with the provisions of this chapter:

13 "(1) Have his . . . license revoked upon order of the board.

14 "(2) Have his . . . right to practice suspended for a period not to exceed one year upon order
15 of the board.

16 "(3) Be placed on probation and be required to pay the costs of probation monitoring upon
17 order of the board.

18 "(4) Be publicly reprimanded by the board. The public reprimand may include a
19 requirement that the licensee complete relevant educational courses approved by the board.

20 "(5) Have any other action taken in relation to discipline as part of an order of probation, as
21 the board or an administrative law judge may deem proper.

22 "(b) Any matter heard pursuant to subdivision (a), "

23 8. Section 2234 of the Code, provides, in pertinent part:

24 "The board shall take action against any licensee who is charged with unprofessional
25 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
26 limited to, the following:

27 "(a) . . . (b)."

28 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or

1 omissions. An initial negligent act or omission followed by a separate and distinct departure from
2 the applicable standard of care shall constitute repeated negligent acts.

3 "(1) An initial negligent diagnosis followed by an act or omission medically appropriate
4 for that negligent diagnosis of the patient shall constitute a single negligent act.

5 "(2) When the standard of care requires a change in the diagnosis, act, or omission that
6 constitutes the negligent act described in paragraph (1), including, but not limited to, a
7 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
8 applicable standard of care, each departure constitutes a separate and distinct breach of the
9 standard of care.

10 "(d) . . . (e)."

11 "(f) Any action or conduct which would have warranted the denial of a certificate.

12 "(g) . . . (h)."

13 9. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain
14 adequate and accurate records relating to the provision of services to their patients constitutes
15 unprofessional conduct."

16 FIRST CAUSE FOR DISCIPLINE

17 (Repeated Negligent Acts)

18 10. Respondent is subject to disciplinary action under Business and Professions Code
19 section 2234, subdivision (c), in that he committed repeated negligent acts in the care and
20 treatment of patients D.L. and R.K.² The circumstances are as follows:

21 Patient D.L.

22 11. On or about July 9, 2013, patient D.L., a then 44-year old male with a past history of
23 renal failure after a failed kidney transplant, insulin dependent diabetes, coronary and peripheral
24 vascular disease³ (PVD), and dry gangrene⁴ of the 1st and 2nd right foot toes, presented to a

25 ² For privacy, the patients in the Accusation will be identified by their first and last initials. Their full names
26 will be disclosed to Respondent upon timely request for discovery pursuant to Government Code section 11507.6.

27 ³ Peripheral vascular disease is a disorder affecting blood flow through the veins and arteries distal to the
28 heart.

⁴ Gangrene is the term used to describe the decay or death of an organ or tissue caused by a lack of blood
supply. It is a complication resulting from infectious or inflammatory processes, injury, or degenerative changes

(continued...)

1 Dialysis Access Center (Center) for a follow up visit . At that time, Respondent examined D.L.
2 and noted in the patient's chart that it was ok to proceed with a " right 1st toe amputation"—this
3 notation, however, was subsequently crossed out by Respondent as an error.⁵ Respondent
4 ordered that D.L. undergo a repeat arterial duplex scan⁶ of his right posterior tibial artery (PTA)⁷,
5 peroneal artery (PA)⁸, anterior tibial artery (ATA)⁹ and dorsalis pedis artery (DTA) as he had no
6 improvement in the dry gangrene of two toes on his right foot.

7 12. On or about July 11, 2013, D.L. presented for the arterial duplex scan which showed
8 improved blood flow in the PTA and PA, however, the ATA and DPA were re-occluded.¹⁰ As a
9 result of these findings, Respondent recommended that another angiogram¹¹ be performed with
10 possible balloon angioplasty¹² in an attempt to re-vascularize the occluded arteries.

11 13. On or about July 26, 2013, Respondent performed an arteriogram¹³ of D.L.'s right
12 lower extremity. The PTA pulse was documented at +1 both pre and post procedure. The images
13 of the arteriogram showed widely patent¹⁴ circulation to the patient's foot via the PTA, however,
14 the ATA was occluded and the DPA was not seen. Respondent documented, in his procedure

15
16 (...continued)

17 associated with chronic diseases, such as diabetes mellitus. Dry gangrene is that which occurs without subsequent
18 bacterial decomposition of the tissue which becomes dry and shriveled.

19 ⁵ The notation regarding the amputation of the right 1st toe was crossed out by Respondent a few days later
20 on July 11, 2013. Respondent also initially wrote in his plan that the patient should return for a follow up visit in
21 three months. This was also crossed out as an error on July 9, 2013.

22 ⁶ Duplex scans determine the direction of blood flow within the veins.

23 ⁷ The posterior tibial artery is one of the three terminal branches of the popliteal artery (which is a
24 continuation of the femoral artery which supplies blood to the knee and calf), supplying deep muscles of the back of
25 the lower leg and passes behind and below the medial malleolus (the rounded process of the tibia forming the internal
26 surface of the ankle joint) and within the foot it divides to form the medial and lateral plantar arteries which supply
27 blood to the sole of the foot and toes.

28 ⁸ The peroneal artery supplies blood to the outside and back of the ankle and deep calf muscles.

⁹ The anterior tibial artery is one of two divisions of the popliteal artery, arising in back of the knee,
dividing into six branches, and supplying various muscles of the leg, ankle and foot. As it becomes more superficial
in the distal anterior lower leg it supplies anterior-compartment muscles and passes into the foot to form the dorsalis
pedis artery which supplies blood to the foot and toes.

¹⁰ Re-occluded means closed, plugged or obstructed again.

¹¹ An angiogram is a radiographic image of a blood vessel after injection of a radiopaque contrast medium.

¹² A balloon angioplasty is a procedure used to widen vessels narrowed by stenosis wherein a balloon
catheter is inflated inside an artery, stretching the intima (the innermost coat of a blood vessel) and leaving a ragged
interior surface after deflation, which triggers a healing response and breaking up of plaque.

¹³ An arteriogram is a diagnostic test that involves viewing the arteries and/or attached organs by injecting
a contrast medium, or dye, into the artery and taking an x ray.

¹⁴ Patent means unobstructed, open or not closed.

1 note, that he was unable to gain guide-wire access due to the occluded ATA. Upon removal of
2 the guide-wire it was discovered that the distal tip of the wire had broken off and remained in the
3 occluded ATA. Respondent, however, failed to document the retained tip of the wire in his
4 operative report or procedure note, and failed to notify the patient of the retained wire fragment.
5 Another employee who assisted during the procedure filed an Incident Report concerning the
6 retained wire fragment.

7 14. On or about July 29, 2013, D.L. returned to the Center for a mapping of the greater
8 saphenous vein¹⁵ to see if the vein could be utilized for a bypass graft.¹⁶ Respondent determined
9 that the vein was viable for the bypass graft and scheduled D.L. for a femoral distal bypass of the
10 right lower extremity in an attempt to re-vascularize the lower leg and foot. At that time,
11 Respondent did not inform D.L. of the retained wire from the arteriogram performed on July 26,
12 2013.

13 15. On or about August 1, 2013, Respondent performed the vein bypass surgery of the
14 patient's right lower extremity. In his operative report, Respondent documented that there was a
15 strong biphasic¹⁷ signal of the distal ATA at the completion of the procedure. On this same date,
16 Respondent dictated an addendum to his July 26, 2013 arteriogram operative report regarding the
17 retained tip of the guide wire, however, Respondent did not inform the patient of the retained wire
18 tip.

19 16. On or about August 6, 2013, D.L. returned to the Center complaining of a lot of pain,
20 and it was noted that the dry gangrene of his two right toes had progressed into wet gangrene.¹⁸
21 Additionally, the vein bypass procedure, performed five days earlier, had failed to re-vascularize
22 the patient's lower right leg and foot. As a result of the failed vein bypass and the other
23 previously failed endovascular attempts to re-vascularize the area, Respondent determined that
24 the patient required the amputation of his right leg below the knee. Had the patient's 1st right toe

25
26 ¹⁵ The saphenous vein is a long vein in the thigh or calf commonly used for bypass grafts.

27 ¹⁶ A bypass graft is a surrogate blood vessel used to re-route blood flow to substitute for a diseased vessel.

28 ¹⁷ Biphasic refers to having or referring to two phases.

¹⁸ Wet gangrene is the ischemic necrosis of an extremity with bacterial infection. Ischemic is a decrease in the blood supply to a bodily organ, tissue, or part caused by constriction or obstruction of the blood vessels.

1 been amputated as originally documented in the July 9, 2013 office visit, his right lower leg
2 would have been salvaged.

3 17. On or about August 20, 2013, Respondent saw D.L. who was complaining of
4 increased devitalization¹⁹ of his right foot and pain. At that time, the patient was scheduled for a
5 below the knee amputation of his right leg. At this visit Respondent informed D.L. that the distal
6 tip of the guide wire had broken off, during the July 26, 2013 procedure, and was retained in the
7 occluded section of his ATA. Thereafter, D.L. had his right leg amputated below the knee.

8 **Patient R.K.**

9 18. On or about July 29, 2013, patient R.K., a then 34-year old male on hemodialysis²⁰,
10 presented to a Dialysis Access Center (Center) with severe arm swelling of the upper left
11 extremity. At that time, dialysis was performed and R.K. was scheduled to return for a left upper
12 extremity fistulogram.²¹

13 19. On or about August 5, 2013, R.K. presented for the fistulogram which revealed
14 significant venous stenosis.²² Respondent then performed a balloon angioplasty at the level of the
15 subclavian vein.²³ During the procedure, Respondent overinflated the balloon and it ruptured.
16 After the rupture, Respondent proceeded to remove the balloon which tore leaving a balloon
17 fragment within the blood vessel. When the balloon was removed it had two torn edges.
18 Respondent failed to attempt to remove the retained balloon fragment and failed to make any
19 effort to secure the fragment in place to prevent distal migration and possible embolization²⁴ in
20 the future. Respondent also failed to document the balloon rupture and the retained fragment in

21 ¹⁹ Devitalization is the act of reducing the vitality of something.

22 ²⁰ Hemodialysis is procedure for removing metabolic waste products or toxic substances from the
23 bloodstream by dialysis wherein the blood flows out of the body into a machine that filters out the waste products and
24 routes the cleansed blood back into the body. Dialysis is a process of filtering and removing waste products from the
25 bloodstream.

26 ²¹ A fistulogram is a radiograph after infusion into a permanent abnormal passageway between two organs
27 in the body or between an organ and the exterior of the body with radiopaque material. Radiopaque material is a
28 substance which is opaque to x-rays to provide contrast in the study.

²² Stenosis is a stricture or an abnormal narrowing of a duct or canal.

²³ The subclavian vein is the vein that continues the axillary as the main venous stem of the upper member,
follows the subclavian artery, and joins with the internal jugular vein to form the brachiocephalic vein.

²⁴ Embolization is the process or condition of becoming an embolus. Embolus is a foreign object, quantity
of air or gas, bit of tissue or tumor, or piece of a thrombus that circulates in the bloodstream until it becomes lodged
in a vessel.

1 his operative report or in the procedure note. Respondent further failed to notify the patient of the
2 retained balloon fragment. Another employee who assisted during the procedure filed an Incident
3 Report about the balloon rupture and retained fragment. This report resulted in an investigation
4 and the patient was contacted to return to the Center.

5 20. As a result of the Incident Report, Respondent was requested to prepare an addendum
6 to his operative report. Respondent's initial addendum stated that the distal one-third of the
7 balloon had been stripped off the catheter which "was not evident at the time of the procedure."
8 This was incorrect. On August 15, 2013, Respondent signed and dated the addendum to his
9 operative report, but had removed the language that the torn balloon "was not evident at the time
10 of the procedure."

11 21. On or about August 19, 2013, R.K. returned to the Center when he was finally
12 informed about the balloon rupture and fragment. Respondent told R.K. that an x-ray evaluation
13 was necessary to attempt to located and possibly retrieve the retained balloon fragment. R.K.
14 consented and the x-ray evaluation was performed, however, the balloon fragment was not
15 located.

16 22. Respondent committed repeated negligent acts in his care and treatment as follows:

17 **Patient D.L.**

18 A.) Made multiple failed attempts at lower extremity re-vascularization resulting in below
19 the knee leg amputation of the patient's right lower leg; and

20 B) Failed to document the retained tip of the wire fragment in his operative report and
21 procedure note on July 26, 2013, and failed to timely notify the patient.

22 **Patient R.K.**

23 C) Failed to make an effort to remove the retained balloon fragment in the blood vessel
24 at the time of the initial procedure or to secure it in place to prevent it from migrating at that time,
25 and

26 D) Failed to document the rupture and retained balloon fragment in his operative report
27 or procedure note of August 5, 2013, and failed to timely notify the patient.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

23. Respondent is subject to disciplinary action under section 2266 in that Respondent failed to maintain adequate and accurate records in his care and treatment of patients D.L. and R.K. The circumstances are as follows:

24. Paragraphs 11 through 21, inclusive, above are incorporated herein by reference as if fully set forth.

DISCIPLINE CONSIDERATIONS

25. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about August 8, 2014, in a prior disciplinary action *entitled In the Matter of the Accusation Against James H. Lee, M.D.* before the Medical Board of California, in Case Number 06-2010-209703, Respondent's license was previously disciplined (revocation stayed) and placed on five (5) years probation for sustaining two misdemeanor convictions involving alcohol, in violation of Business and Professions Code section 2239, and conviction of crimes substantially related, in violation of Business and Professions Code section 2236. That decision is now final and is incorporated by reference as if fully set forth herein.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:


- 1. Revoking or suspending Physician's and Surgeon's Number G 84634, issued to JAMES H. LEE, M.D.;
- 2. Revoking, suspending or denying approval of Respondent's authority to supervise physician's assistants, pursuant to section 3527 of the Code;
- 3. Ordering Respondent to pay the Medical Board of California the costs of probation monitoring, if placed on probation; and

///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. Taking such other and further action as deemed necessary and proper.

DATED: October 28, 2014


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

LA2014614359
61403928.docx